

On motion of Senator Erath, the rules were suspended, and Senate bill No. 207, "An act to provide for disposing of certain lands belonging to Texas, known as the 'Indian Reservation,'" was taken up and made special order for Saturday next, at 3 o'clock P. M.

On motion of Senator Joseph, the Senate adjourned.

EIGHTY-THIRD DAY.

SENATE CHAMBER.)
Austin, April 23, 1874. }

Senate met pursuant to adjournment.

Roll called; quorum present.

Prayer by the chaplain.

The reading of the journal dispensed with.

(Senator Westfall in the chair.)

Senator Joseph presented certain accounts for papers. Referred to Committee on Claims and Accounts.

On motion of Senator Wood the Secretary was excused for the day.

Senator Ireland, Chairman of Judiciary Committee, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Judiciary, to whom was referred Senate bill No. 415, 'An act to legalize the marriage between Julius Henry and Bertha Nathan,' ask leave to return the same and recommend its passage.

IRELAND, Chairman.

The special order being the consideration of Senate Joint Resolution "proposing amendments to the Constitution of the State of Texas," it was taken up and read second time.

Senator Wood offered the following amendment as a substitute for section fourteen of article four:

Section 14. "There shall be established in each county of this State, a probate court, which shall be presided over by an officer styled a probate judge. Such officer shall be elected by the qualified voters of the county, and shall hold his office for four years and until his successor is elected and qualified, unless sooner removed by law. He shall be a qualified voter of the county and be learned in the law. The probate court shall have jurisdiction to take

probate of wills, grant letters testamentary, administration and guardianship, to settle the accounts, and manage the estates of deceased persons, minors, lunatics, idiots and persons of unsound mind, under such rules and regulations as may be by law prescribed. The judge of said court shall be *ex-officio* clerk of his own court, and may exercise such other power and jurisdiction as by law may be conferred upon him and his court. An appeal shall lie from the probate court to the district court under such rules as may be by law prescribed. The District Court may revise the proceedings of the Probate Court by writ of certiorari, and shall generally have and exercise such original jurisdiction over the proceedings of the Probate Court, the estates of deceased persons, minors, idiots, lunatics, and persons of unsound mind, as may be by law prescribed. The judge of the probate court shall not be prohibited from practicing law except as to such matters over which his own court shall have jurisdiction.

Senator Shepard offered the following resolution :

Resolved, That further consideration of the joint resolution "proposing amendments to the constitution" be postponed until Monday of the second week of the next session of the next Legislature ; and that five thousand copies of the same be printed for circulation.

Senator Culberson offered the following as an amendment to the resolution offered by Senator Shepard :

"After the same shall be adopted by the Senate."

Senator Russell offered the following as a substitute for the amendment offered by Senator Culberson :

"After the same shall have been engrossed."

Senator Parker moved to lay the resolution, amendment and substitute on the table for the present.

Senator Culberson withdrew his amendment.

Senator Russell then withdrew his substitute.

The question then recurring to the motion to lay the resolution of Senator Shepard on the table for the present, it was carried by the following vote :

YEAS—Senators Allison, Baker, Bradley, Burton, Camp, Culberson, Davenport, Dwyer, Erath, Friend, Ledbetter, Morris, Moore, Parker, Stirman, Swift, Westfall and Wood—18.

NAYS—Senators Ball, Bradshaw, Dillard, Ellis, Hobby, Ireland, Joseph, Russell, Shepard and Trolinger—10.

The question then recurring on the adoption of the

amendment offered by Senator Wood, it was adopted by the following vote :

YEAS—Senators Bradshaw, Bradley, Culberson, Davenport, Dwyer, Erath, Ledbetter, Morris, Moore, Randle, Russell, Stirman, Swift, Trolinger and Wood—15.

NAYS—Senators Allison, Ball, Baker, Camp, Dillard, Ellis, Friend, Hobby, Ireland, Joseph, Parker, Shepard and Westfall—13.

Senator Culberson offered the following amendment as a substitute for sections six and seven of the judicial department :

“The State shall be divided into convenient judicial districts. For each district there shall be elected by the qualified electors of such district a judge, who shall, at the time of his election, have arrived at the age of thirty years. He shall at the time of his election be a resident of the district, and shall hold his office for four years. He shall hold the courts at one place in each county at least twice in each year, in such manner as may be prescribed by law. He shall hold his office for four years, and shall receive an annual salary of thirty-five hundred dollars, which shall not be increased or diminished during his term of office.” Adopted by the following vote :

YEAS—Senators Allison, Ball, Bradshaw, Bradley, Burton, Culberson, Davenport, Dillard, Dwyer, Erath, Friend, Hobby, Joseph, Ledbetter, Morris, Parker, Russell, Stirman, Swift, Trolinger, Westfall and Wood—22.

NAYS—Senators Baker, Camp, Ellis, Ireland, Moore and Shepard—6.

Senator Wood offered the following amendment to the substitute just adopted :

“Add to the end of the first sentence the following words: ‘and the Legislature shall have the power to alter, change, increase or diminish the number of judicial districts.’” Adopted.

Senator Culberson offered the following amendment :

“Article twelve, schedule, section one, strike out all of said section after the word ‘vacant,’ fifth line.” Adopted.

Senator Friend offered the following amendment to article four, section ten :

“After the word ‘escheats,’ in fourth line, insert the words ‘and of all suits and cases in which the State may be interested ; of all cases of divorce ; of all suits to recover

damages for slanders or defamation of character; of all suits for the trial of title to land; of all suits for the enforcement of liens upon real property."

Adopted.

Senator Erath offered the following amendment to the substitute offered by Senator Culberson:

"Strike out 'thirty-five hundred dollars' and insert the words 'stated salary as may be fixed by the Legislature.'" Lost by the following vote:

YEAS—Senators Allison, Ball, Bradshaw, Burton, Dillard, Dwyer, Erath, Joseph, Parker, Randle, Swift, Trolinger and Wood—13.

NAYS—Senators Baker, Bradley, Camp, Culberson, Davenport, Ellis, Friend, Hobby, Ireland, Ledbetter, Morris, Moore, Russell and Westfall—14.

Senator Dwyer offered the following amendment:

"Amend by striking out in section four, lines nine and ten, the words 'forty-five hundred dollars' and inserting the words 'eight thousand dollars.'" Lost by the following vote:

YEAS—Senators Dwyer, Randle and Russell—3.

NAYS—Senators Allison, Ball, Baker, Bradshaw, Bradley, Burton, Camp, Culberson, Davenport, Dillard, Ellis, Erath, Friend, Hobby, Ireland, Joseph, Ledbetter, Morris, Moore, Parker, Shepard, Swift, Trolinger, Westfall and Wood—25.

Senator Ireland presented the following reason for voting "no" on the substitute offered by Senator Culberson in regard to electing district judges:

"While I believe the people of my district are in favor of the elective system, I believe they are willing to forego their own views to save our friends in other portions of this State."

IRELAND.

A message was received from the House announcing the passage of Senate bill No. 364, "An Act to incorporate the Hearne, Belton and North-Western Railroad Company, and aid in constructing the same by granting lands thereto;" also, Senate bill No. 311, "An Act to authorize the International and Great Northern Railroad Company to issue bonds;" also, Senate bill No. 105, "An Act to amend an act entitled 'An act to incorporate the Austin and Pacific Short Line Railroad Company,'" passed May 30, 1873, with amendments by the House; also, that the House concurs in Senate amendments to House bill No. 387, "An

Act to provide for the sale of the land granted to the Deaf and Dumb, the Lunatic and Blind Asylums."

A further message was received from the House, announcing the passage of Senate bill No. 148, "An Act to limit the amount to be issued in bonds of the State to the International Railroad Company, and to provide for the payment of the same."

Senator Shepard offered the following amendment:

"Amend section 11, by adding to the end thereof the words 'to fill such vacancy for the unexpired term.'"

Senator Wood offered the following amendment as a substitute for the one offered by Senator Shepard: "Such appointee shall only hold until an election can be had, and until a successor is qualified, which elected incumbent shall only hold for the unexpired term for which he is elected to fill."

Senator Shepard accepted the substitute and withdrew his amendment. The amendment offered by Senator Wood was then adopted.

Senator Dwyer offered the following amendment:

"Amend section four, lines 9 and 10, by inserting '\$5950,' in lieu of '\$4500.'"

Lost by the following vote:

YEAS—Senators Dwyer, Friend, Joseph, Randle and Russell—5.

NAYS—Senators Allison, Ball, Baker, Bradshaw, Bradley, Burton, Camp, Culberson, Davenport, Dillard, Ellis, Erath, Hobby, Ireland, Ledbetter, Morris, Moore, Parker, Shepard, Swift, Trolinger, Westfall and Wood—23.

Senator Dwyer offered the following amendment:

"Amend section four, lines 9 and 10, by inserting '\$5000' in lieu of '\$4500.'"

Lost by the following vote:

YEAS—Senators Burton, Dwyer, Ellis, Friend, Joseph, Ledbetter, Morris, Randle, Russell and Shepard—10.

NAYS—Senators Allison, Ball, Baker, Bradshaw, Bradley, Camp, Culberson, Davenport, Dillard, Erath, Hobby, Ireland, Moore, Parker, Swift, Trolinger, Westfall and Wood—18.

Senator Culberson offered the following amendment:

"Strike out the word 'and' in third line, section twenty-nine, and all that follows, down to the word 'and' in sixth line."

Senator Hobby offered the following as a substitute for the amendment offered by Senator Culberson :

"In section twenty-nine, after the word 'franchise,' in line 6, insert the words 'provided in the charter creating the corporation, the right to repeal or revoke by a two-thirds vote, is reserved.'"

Senator Hobby withdrew his substitute.

A message was received from the House announcing the passage of Senate bill No. 121, "An Act to improve the navigation of the Sabine, Neches and Angelina rivers and Pine Island bayou, in the State of Texas," with amendments by the House; also, the passage of House bill No. 230, "An Act providing for the payment for certain furniture in the Governor's Mansion."

Senator Russell offered the following resolution :

WHEREAS, The Legislature of the State of Texas has fixed the fourth day of May for adjournment; and

Whereas, The appropriation and many other important bills await action at the hands of this Legislature; therefore, be it

Resolved, That the consideration of the joint resolution "proposing amendments to the Constitution of the State of Texas" be postponed until the third Tuesday of the next session of this Legislature.

Senator Culberson withdrew his pending amendment for the present, in order to consider the resolution just proposed.

(The President in the chair.)

Senator Friend moved a call of the Senate. Call sustained.

Absent—Senators Ball and Dwyer.

The sergeant-at-arms was dispatched for absent Senators.

Senator Dwyer was announced as present.

The sergeant-at-arms reported that he could not find Senator Ball.

On motion of Senator Ireland, the call was suspended.

On motion of Senator Erath, the Senate adjourned.

AFTERNOON SESSION.

Senate met pursuant to adjournment. Roll called; quorum present.

Senator Erath gave notice that he would move to reconsider the vote by which the Senate concurred in House amendments to Senate bill No. 240, "An Act to incorporate

the Texas, Midland, Gulf and New Orleans Railway, and to aid in the construction of the same."

The pending business being the consideration of the resolution offered by Senator Russell in regard to postponing the consideration of the joint resolution "proposing amendments to the Constitution of the State of Texas," it was taken up.

Senator Bradshaw offered the following as a substitute for the resolution offered by Senator Russell.

(Senator Dillard in the chair.)

WHEREAS, Differences of opinion exist as to the wish of the people to have a constitutional convention; therefore, be it

Resolved, That at the next congressional election the question shall be submitted to the people; and for this purpose each voter at said election, who desires a convention, shall endorse on his ballot "for a constitutional convention," and those who are opposed to the convention shall endorse on their ballot "against a constitutional convention."

The President decided that the substitute was not in order, not being germane to the subject.

Senator Bradshaw appealed from the decision of the chair.

The Senate sustained the decision of the chair by the following vote:

YEAS—Senators Allison, Ball, Baker, Bradley, Burton, Camp, Davenport, Dwyer, Ellis, Friend, Ledbetter, Parker, Randle, Shepard, Stirman, Swift and Westfall—18.

NAYS—Senators Bradshaw, Culberson, Hobby, Ireland, Joseph, Morris, Moore, Trolinger and Wood—9.

(The President in the chair.)

Senator Allison moved to lay the resolution offered by Senator Russell on the table. Carried by the following vote:

YEAS—Senators Allison, Baker, Bradley, Burton, Camp, Culberson, Davenport, Dwyer, Ellis, Erath, Friend, Ledbetter, Morris, Moore, Parker, Stirman, Swift, Westfall and Wood—19.

NAYS—Senators Ball, Bradshaw, Dillard, Hobby, Ireland, Joseph, Randle, Russell, Shepard and Trolinger—10.

The question then recurring on the adoption of the amendment offered by Senator Culberson, and which was

withdrawn by him temporarily to allow Senator Russell to introduce his resolution, it was adopted by the following vote :

YEAS—Senators Ball, Baker, Bradshaw, Bradley, Burton, Culberson, Davenport, Dwyer, Ellis, Friend, Hobby, Joseph, Ledbetter, Moore, Parker, Russell, Swift and Westfall—18.

NAYS—Senators Allison, Camp, Dillard, Erath, Ireland, Morris, Randle, Shepard, Stirman, Trolinger and Wood—11.

Senator Friend offered the following amendment :

“In article one, Bill of Rights, amend section eight, line six, by inserting the word ‘prosecutions’ for the word ‘indictments.’ ” Adopted.

Senator Friend offered the following amendment :

“Amend article two, page eleven, in line six, by striking out the words ‘or salaried officer of any railroad company.’ ” Adopted.

Senator Friend offered the following amendment :

“Amend section two, on page eleven, lines four and five, by striking out the words ‘of profit or trust.’ ” Adopted.

Senator Bradley moved the previous question, which was the engrossment of the joint resolution.

The joint resolution was ordered engrossed by the following vote :

YEAS—Senators Allison, Baker, Bradley, Camp, Davenport, Dwyer, Erath, Friend, Ledbetter, Morris, Moore, Parker, Randle, Stirman, Swift, Westfall and Wood—17.

NAYS—Senators Ball, Bradshaw, Burton, Culberson, Dillard, Ellis, Hobby, Joseph, Russell, Shepard and Trolinger—10.

Senator Bradley offered the following resolution :

Resolved, That the further consideration of the joint resolution proposing amendments to the State Constitution be postponed until the third Tuesday of the next session of the Legislature, and that three thousand copies of the engrossed amendments be printed for distribution. Read and laid over under the rules.

Senator Dwyer, for Committee on Enrolled Bills, submitted the following report :

Hon. R. B. Hubbard, President of the Senate :

Your Committee on Enrolled Bills ask leave to report that they have carefully examined Senate bill No. 148, “An Act to limit the amount to be issued in bonds of the State

to the International Railroad Company, and to provide for the payment of the same," and find the same correctly enrolled, and have this twenty-third day of April, 1874, at 4:15 o'clock P. M. presented the same to the Governor for his approval.

JOSEPH E. DWYER, for Committee.

Senator Trolinger arose to a question of privilege and asked the Secretary to read an article published in the *Galveston Mercury*, signed "C. M.," and written from Austin by a reporter of the *Mercury*, wherein the actions and motives of members of the House were impugned.

The communication was read.

Senator Trolinger then offered the following resolution:

WHEREAS, A scurrilous article appeared in the *Galveston Daily Mercury* of the twenty-second instant, signed "C. M.," acknowledged to be written by one Charles Mathews, which said article reflects upon the motives and integrity of honorable members of the House of Representatives: therefore, be it

Resolved By the Senate, that the said Charles Mathews is hereby expelled from all privileges and courtesies of this body as a reporter. Adopted by the following vote:

YEAS—Senators Allison, Ball, Baker, Bradshaw, Bradley, Camp, Culberson, Davenport, Dillard, Dwyer, Ellis, Erath, Friend, Hobby, Joseph, Ledbetter, Morris, Moore, Parker, Russell, Shepard, Swift, Trolinger, Westfall and Wood—25.

NAYS—Senator Burton—1.

On motion of Senator Culberson, the rules were suspended, and House bill No. 513, "An Act to provide for the building and completing of two State penitentiaries, with a view to the utilization of the convict labor of the State in mining and manufacturing enterprises," was taken up and made a special order for Saturday at 10 o'clock A. M.

A message was received from the Governor.

Senator Dwyer offered the following resolution:

Resolved, That the Enrolling and Engrossing Committees of the Senate are hereby authorized to employ such assistance as may be necessary to carry on the business of their respective departments. Adopted.

On motion of Senator Shepard, all special orders were postponed until 9 o'clock A. M. to-morrow.

Senator Shepard introduced a bill entitled "An Act for the relief of certain persons in this State from all penalties, forfeitures and costs incurred by reason of failure to pay certain taxes heretofore levied for the support of public schools." Read first time and referred to Judiciary Committee.

On motion of Senator Bradley, the rules were suspended and House bill No. 186, "An Act for the relief of certain citizens of Limestone and Walker counties," was taken up, made special order for Monday next at 10 o'clock A. M., and to continue as such special order until disposed of.

On motion of Senator Russell, the rules were suspended and House bill No. 405, "An Act to encourage irrigation in El Paso county, by granting lands in aid thereof," was taken up and read first time.

On motion of Senator Dwyer, the rules were suspended, bill read second time and passed to third reading.

On motion of Senator Russell, the rules were suspended, bill read third time and passed by the following vote:

YEAS—Senators Ball, Baker, Bradley, Burton, Culberson, Davenport, Dillard, Dwyer, Ellis, Frath, Friend, Hobby, Joseph, Ledbetter, Morris, Randle, Russell, Shepard and Swift—19.

NAYS—Senators Allison, Camp, Moore, Parker and Westfall—5.

On motion of Senator Ball, the Senate adjourned.

EIGHTY-FOURTH DAY.

SENATE CHAMBER,)
Austin, April 24, 1874.)

Senate met pursuant to adjournment. Roll called: quorum present.

Prayer by Rev. H. S. Thrall.

On motion of Senator Parker, Senator Culberson was excused for the day, on account of sickness.

On motion of Senator Shepard, Senator Ledbetter was excused for the day, on account of sickness.

The reading of the Journal of yesterday was dispensed with.

Senator Westfall introduced a resolution, "in regard to employing Nat. Q. Henderson, to copy the official proceed-